

MIAMI TRIBE OF OKLAHOMA,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 94-179-A
MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	June 8, 1995

This is an appeal from a July 28, 1994, decision of the Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to acquire certain land in Boone County, Indiana, in trust for the Miami Tribe of Oklahoma (Tribe). For the reasons discussed below, the Board affirms the Area Director's decision.

On March 10, 1994, the Tribe applied at the Miami Agency, BIA, for trust acquisition of two tracts of land, one containing 321.516 acres and the other 29.549 acres, near Thorntown, Boone County, Indiana. The Tribe's request stated in part:

The property in question is currently used for an agricultural purpose, and that will continue for a term. Other uses will include a cultural museum, and other retail uses, which will have a high revenue generating potential. The property will be used by this Tribe for economic development, for the purpose of strengthening our tribal government, and to foster self-determination. The land is necessary to facilitate our economic development and to facilitate this Tribe's self-determination. Although 25 CFR § 151 does not require any statements as to gaming activities, we do not plan on any type of gaming on the property that would require a review by the Central Office.

(Tribe's Mar. 10, 1994, Letter at 1-2)

The Miami Agency Superintendent transmitted the request to the Area Director, stating, inter alia, that "the Agency lacks funding and personnel to supervise and administer land located as far away as Indiana." Despite this concern, however, the Superintendent also stated: "[W]e would like for the Area Office to weight the factors found in Section 151 in favor of the benefits that may be realized by the Tribe" (Superintendent's May 2, 1994, Memorandum).

At the Area Office, the Tribe's request was first reviewed by the Supervisory Realty Specialist, who prepared two memoranda, one for each tract, analyzing the requested acquisitions under each of the factors in 25 CFR 151.10. ^{1/} He recommended against trust acquisition, based on his analysis under subsection 151.10(g). On May 19, 1994, the Area Director concurred in the Supervisory Realty Specialist's recommendations. On May 23, 1994, he issued two decisions, one for each tract, denying the acquisition requests. Each decision states:

According to your application, the area is within the historical aboriginal lands of the Miami Indians. Its current use is agricultural in an area where farming, mostly grain and livestock, is the main enterprise. Our evaluation of the application using the factors of 25 CFR 151.10 reveals that there is authority to acquire the property in trust under the Act of June 18, 1934, 48 Stat. 984, as amended. The purpose of the acquisition would be for economic development, strengthening tribal self-government, and to foster self-determination. Plans include continued agricultural use, a cultural museum, and retail uses for revenue generation. No jurisdictional problems or conflicts over land use have been identified but can reasonably be expected given the location and the fact that the State of Indiana has little or no experience in dealing with issues associated with Indian trust land. The County Sheriff has indicated willingness to provide law enforcement and no objections have been expressed by the county over the loss of property tax revenue. We have determined, however, that the overriding factor in the consideration of your application is § 151.10(g), the ability of the Bureau to assume the additional responsibilities resulting from taking the land in trust.

^{1/} 25 CFR 151.10 provides:

"In evaluating requests for the acquisition of land in trust status, the Secretary shall consider the following factors:

"(a) The existence of statutory authority for the acquisition and any limitations contained in such authority;

"(b) The need of the individual Indian or the tribe for additional land;

"(c) The purposes for which the land will be used;

"(d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;

"(e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;

"(f) Jurisdictional problems and potential conflicts of land use which may arise; and

"(g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status."

The subject property is approximately 500 miles from the Miami Agency and well outside the former reservation and current jurisdictional boundaries of the Miami Tribe in Oklahoma. The Miami Agency has neither the resources or staff to properly administer the property. The distance alone makes it virtually impossible for Agency personnel to regularly visit the property. Further, although the property appears to have potential for a variety of commercial, including cultural, uses, neither the Miami Agency nor the Muskogee Area Office have the expertise, or the resources to acquire the expertise, necessary to manage the existing uses of the property much less realize the development of that potential.

Therefore, we have determined that neither the Miami Agency nor we have the resources to assume the additional responsibilities resulting from taking the land in trust and are denying your request to acquire the property in trust for the Miami Tribe of Oklahoma.

(Area Director's May 23, 1994, Decisions at 1-2).

The Tribe sought reconsideration, and the Area Director agreed to reconsider the Tribe's requests if the Tribe submitted documentation showing local support for the acquisition. The Tribe then submitted a number of documents, including a July 5, 1994, "Cooperation Letter" signed by the Boone County Commissioners and the Tribe's Chief. In a June 8, 1994, letter, the Tribe further explained its reasons for wanting to acquire trust land in Indiana. In particular, it stated that, because of the large number of tribes in Oklahoma and the small population base, its economic opportunities in Oklahoma were limited. It reiterated this concern in a July 7, 1994, letter, in which it also offered to "discuss some type of annual payment to defray costs for the Bureau."

On July 28, 1994, the Area Director again denied the Tribe's request, stating in part:

We can appreciate your reasons for wishing to acquire these properties, but we are still unable to support the acquisition of land in trust in Indiana. While the show of support for the acquisition by local officials is not insignificant, it is our determination that it does not outweigh our inability to adequately supervise the property. Your contemplation of future gaming activities only amplifies this concern and increases the potential for conflict. [2/] We are also not convinced that other options for economic development within or nearer to Oklahoma have been adequately explored. Decidedly, however, the fact still remains that we have inadequate resources to administer trust land

2/ Earlier in the decision, the Area Director noted that the July 5, 1994, Cooperation Letter between the Tribe and the Boone County Commissioners "references the possibility of gaming on the property which was not included in your original request."

in Indiana, and although your offer to defray costs to do so is generous, it is not the role of the tribe to fund the Bureau to carry out its trust responsibility. Therefore, our denial of your request on the basis that we lack the ability to assume the additional responsibilities resulting from taking the land in trust stands.

(Area Director's July 28, 1994, Decision at 2).

On appeal to the Board, appellant cites a number of Board decisions concerning BIA's trust acquisition authority. As those decisions illustrate, BIA's authority to acquire land in trust is discretionary, and the Board's authority to review IBIA's decisions in this area is limited. In short, the Board does not substitute its judgment for BIA's but undertakes to ensure that BIA took the proper factors into consideration. E.g., City of Eagle Butte v. Aberdeen Area Director, 17 IBIA 192, 96 I.D. 328 (1989).

Appellant contends that, in this case, the Area Director's reason for denying its trust acquisition request is not adequately supported in the record. It contends further that the decision is not reasonable in view of an overall analysis of the factors in 25 CFR 151.10.

As appellant concedes, the Board has held that BIA may deny a trust acquisition request on the basis of only some, or even one, of the factors in 25 CFR 151.10 "if BIA's analysis shows that factor or factors weighed heavily against the trust acquisition." McAlpine v. Muskogee Area Director, 19 IBIA 2, 6 (1990). In McAlpine, although BIA had given a number of reasons for denying a trust acquisition request, the Board explicitly held that the denial could be sustained on the basis of subsection 151.10(g) alone:

[B]oth [the Superintendent and the Area Director] found that BIA was not equipped or staffed to discharge the additional responsibilities arising from an off-reservation trust acquisition in the State of Kansas. The ability of BIA to discharge the necessary trust functions on newly acquired trust property is an important consideration in determining whether or not a trust acquisition should be approved. The Board holds that the Area Director's decision not to approve appellant's request can be sustained on the basis of his determination that BIA could not adequately discharge the additional responsibilities resulting from the proposed trust acquisition.

19 IBIA at 9. In this case, like McAlpine both the Superintendent and the Area Director stated that BIA would not be able to administer trust property in Indiana. It is plainly apparent from BIA's analysis that this factor "weighed heavily against the trust acquisition."

Contrary to appellant's assertions, the Area Director explained his reasons for concluding that BIA could not adequately discharge the additional responsibilities which would arise were this property to be taken into trust. Clearly, the distance of the property from the servicing BIA Agency,

as well as staffing and funding concerns, were appropriate factors for the Area Director to take into consideration. ^{3/} The Board finds his analysis entirely reasonable.

Appellant also argues that "the criteria set forth in 25 CFR [151.10 are] unconstitutional because they allow for people similarly situated to be treated differently in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution" (Opening Brief at 25).

As it has often stated, the Board has no authority to declare a duly promulgated Departmental regulation invalid. E.g., Wilson v. Acting Portland Area Director, 21 IBIA 188 (1992), and cases cited therein. Necessarily, then, the Board lacks authority to declare 25 CFR 151.10 unconstitutional. Cf. Redleaf v. Muskogee Area Director, 18 IBIA 268 (1990) (The Board lacks authority to declare an act of Congress unconstitutional). For this reason, the Board does not address appellant's constitutional argument.

An appellant challenging a discretionary BIA decision bears the burden of showing that BIA did not properly exercise its discretion. Ross v. Acting Muskogee Area Director, 21 IBIA 251 (1992). Appellant has failed to carry its burden in this case.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's July 28, 1994, decision is affirmed.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

^{3/} Appellant suggests that another BIA Area Office, specifically the Minneapolis Area Office, could administer the property. The Minneapolis Area Office is not under the jurisdiction of the Muskogee Area Director. Nor does it have any authority or responsibility with regard to trust property of the Miami Tribe of Oklahoma. To the extent that appellant takes issue with BIA's organizational structure and delegations of authority, its arguments are not only beyond the scope of this appeal but outside the Board's jurisdiction as well.